IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 57 OF 2005

BOMBI YESHWANT SHETKAR ....Appellant

Versus

SHRI PANDURANG GANESH SHETKAR ALIAS MANDREKAR AND 2 ORS., ...Respondents

Mr. J. F. Melo, Advocate for the appellant.

Coram:- R. M. LODHA, J.

Date:- 6th October, 2005

P.C.

Heard the learned Counsel for the appellant. I perused the Judgment dated 15.12.2004 passed by the Ist Ad-hoc Additional District Judge, Panaji and also the Judgment of the Civil Judge, Junior Division, at Ponda passed on 20th March, 2002.

2. The appellant is the original plaintiff in the suit filed by him against the respondents (original defendants). The plaintiff set up the case that the suit property, details of which have been given in paragraph 1 of the plaint, is possessed and enjoyed in common by all the co-owners including the plaintiff, his brother Pundalik and newphew Yeshwant. It was alleged in the plaint that the defendants No.1 and 2 reside away from the suit property and the defendants No.3 to 5 reside at Dullai Dharbandora. However, the defendants trespassed into the suit property on 13.3.1994 necessitating the following reliefs:

> "a) That by a decree and order of Mandatory injunction this Hon'ble Court be pleased to direct the defendants to demolish and remove whatever structure of stone

pillars so far erected by them in the suit property and also fill up whatever foundation pits dug up by them in the suit property and restore the land to its original state.

b) That by a decree and order of permanent injunction this Hon'ble Court be pleased to restrain the defendants, their relatives, servants, agents and any person or persons claiming through them from erecting any structure or carrying out any construction of whatsoever nature in the suit property or in any part thereof and from interfering in anymanner whatsoever in the suit property or in any part thereof ? "

3. The defendants traversed the averments made in the plaint and submitted that they are in occupation, possession and enjoyment of the suit property from the time of their father and that the defendants have constructed the house in the suit property long back. The defendants denied any trespass into the suit property by them.

4. On the basis of the pleadings of the parties, the trial Court framed the following issues :

(1) Whether the plaintiff proves that defendants have absolutely no right or title or interest of whatsoever nature to the suit property or any part thereof ?

(2) Whether the plaintiff proves that the defendants trespassed into the suit property and started erecting laterite stone pillars occupying an area of about 60 sq. metres ?

5. The parties led evidence.

6. The trial Court accepted the plaintiff's evidence and decreed the suit. Aggrieved thereby, the defendants preferred an appeal. The Appellate Court reversed the Judgment of the trial Court and dismissed the plaintiff's suit giving rise to the present second appeal.

7. From the evidence that was led by the parties, the Appeal Court found that the defendants were in possession of their house in the suit property for a period of more than 60 years. The Appeal Court also found that the claim of the plaintiff that the defendants have trespassed into the suit property does not deserve to be accepted. Moreover, the Appeal Court also held that without a prayer for recovery of possession, the prayer for injunction was not tenable. Nothing has been shown to me by the learned Counsel for the appellant that the finding recorded by the Appellate Court that the defendants have been in possession of their house in the suit property for a period of more than 60 years was erroneous. In this fact situation, the case set up by the plaintiff that it was on 13.3.1994 that the defendants trespassed into the suit property falls flat on the ground.

8. Though the Judgment of the Appeal Court is that of reversal, I find that the consideration of matter and appreciation of the evidence by the Appeal Court does not suffer from any error of law. No substantial question of law arises in this appeal.

Second Appeal is dismissed in limine.

R. M. LODHA, J.

ssm.